

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0897, Thomas A. Methvin v. Gunstock Area Commission, the court on November 16, 2006, issued the following order:**

The plaintiff, Thomas A. Methvin, appeals the dismissal of his action against the defendant, Gunstock Area Commission d/b/a Gunstock Area. He argues that the trial court erred in: (1) concluding that the injury he sustained while skiing when he struck a metal electrical box attached to a light pole was caused by an inherent risk of skiing; and (2) dismissing his claims based upon negligent performance of duties voluntarily undertaken and violation of the Consumer Protection Act. We affirm.

In reviewing a motion to dismiss, we consider whether the allegations in the plaintiff's writ are reasonably susceptible of a construction that would permit recovery. Sweeney v. Ragged Mt. Ski Area, 151 N.H. 239, 240 (2004). We assume all facts pleaded in the plaintiff's writ are true and construe all reasonable inferences from them in the plaintiff's favor; we then consider the facts against the applicable law. Id. If the facts fail to constitute a basis for legal relief, we affirm the granting of the motion to dismiss. Id. at 240-41.

Having reviewed the record before us, we conclude that the trial court correctly determined that the electrical box constituted a risk encompassed by RSA 225-A:24 (2000). See Rayeski v. Gunstock Area, 146 N.H. 495, 498 (2001). We also find no error in the trial court's dismissal of the plaintiff's claims based upon negligent performance of duties voluntarily undertaken, see Restatement (Second) of Torts § 323 (1965), and violation of the Consumer Protection Act, see RSA chapter 358-A (Supp. 2004).

Affirmed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ. concurred.

**Eileen Fox,  
Clerk**